

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Vonage Holdings Corporation,

Plaintiff,

- against -

THE NEW YORK STATE PUBLIC SERVICE  
COMMISSION and WILLIAM M. FLYNN, THOMAS  
J. DUNLEAVY, LEONARD A. WEISS, and NEAL  
N. GALVIN, in their official capacities  
as the Commissioners of the Public  
Service Commission of the State of New  
York, and not as individuals,

Defendants.

04 Civ. No. 4306  
(DFE) (ECF CASE)

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REPLY BRIEF  
OF THE  
PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK

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Dated: February 25, 2005  
Albany, New York

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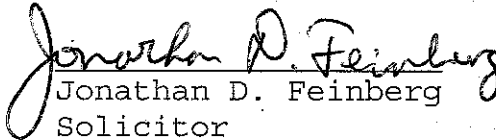
The Public Service Commission of the State of New York (NYPSC) hereby responds to the *amicus curiae* brief of the United States of America and the Federal Communications Commission (FCC). The FCC misunderstands the NYPSC brief to the extent it contends (at 4) that the "NYPSC maintains that it retains the authority to regulate both Vonage's provision of E911 services, NYPSC Mem. 10-11, and issues relating to 'network reliability'. Id. at 12-13."

The NYPSC may, in fact, take that position in its pending challenge to the FCC's order. For the moment, however, the NYPSC has observed no more than that issues of the state

role with respect to E911 and network reliability are among the important regulatory matters that remain to be addressed by the FCC. The FCC apparently does not dispute that these issues have not been resolved.<sup>1</sup>

Respectfully submitted,

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<sup>1</sup> At page 4, n. 1, the FCC also takes the NYPSC to task, claiming, inter alia, that it "has misquoted the text of" 47 U.S.C. § 253(b). This contention is somewhat misplaced because it is part of an attack on a position on state jurisdiction that, as discussed, the NYPSC has not, as yet, espoused. Moreover, the NYPSC in fact quoted the full text of Section 253(b) (NYPSC at 13 note 7). In any event, the FCC's footnote goes on to demonstrate that the question of how to ensure the reliability of the service provided to Vonage customers has yet to be addressed, insofar as the FCC argues that it has yet to decide whether Vonage offers a telecommunications service.